

§ 226.17

7 CFR Ch. II (1–1–13 Edition)

home for serious health or safety violations, the sponsoring organization must immediately suspend the home's CACFP participation prior to any formal action to revoke the home's licensure or approval. If the sponsoring organization determines that there is an imminent threat to the health or safety of participants at a day care home, or that the day care home has engaged in activities that threaten the public health or safety, and the licensing agency cannot make an immediate on-site visit, the sponsoring organization must immediately notify the appropriate State or local licensing and health authorities and take action that is consistent with the recommendations and requirements of those authorities. An imminent threat to the health or safety of participants and engaging in activities that threaten the public health or safety constitute serious deficiencies; however, the sponsoring organization must use the procedures in this paragraph (1)(4) (and not the procedures in paragraph (1)(3) of this section) to provide the day care home notice of the suspension of participation, serious deficiency, and proposed termination of the day care home's agreement.

(ii) *Notice of suspension, serious deficiency, and proposed termination.* The sponsoring organization must notify the day care home that its participation has been suspended, that the day care home has been determined seriously deficient, and that the sponsoring organization proposes to terminate the day care home's agreement for cause, and must provide a copy of the notice to the State agency. The notice must:

(A) Specify the serious deficiency(ies) found and the day care home's opportunity for an administrative review of the proposed termination in accordance with § 226.6(1);

(B) State that participation (including all Program payments) will remain suspended until the administrative review is concluded;

(C) Inform the day care home that if the administrative review official overturns the suspension, the day care home may claim reimbursement for eligible meals served during the suspension;

(D) Inform the day care home that termination of the day care home's agreement will result in the placement of the day care home on the National disqualified list; and

(E) State that if the day care home seeks to voluntarily terminate its agreement after receiving the notice of proposed termination, the day care home will still be terminated for cause and disqualified.

(iii) *Agreement termination and disqualification.* The sponsoring organization must immediately terminate the day care home's agreement and disqualify the day care home when the administrative review official upholds the sponsoring organization's proposed termination, or when the day care home's opportunity to request an administrative review expires.

(iv) *Program payments.* A sponsoring organization is prohibited from making any Program payments to a day care home that has been suspended until any administrative review of the proposed termination is completed. If the suspended day care home prevails in the administrative review of the proposed termination, the sponsoring organization must reimburse the day care home for eligible meals served during the suspension period.

(m) Sponsoring organizations of family day care homes must not make payments to employees or contractors solely on the basis of the number of homes recruited. However, such employees or contractors may be paid or evaluated on the basis of recruitment activities accomplished.

[47 FR 36527, Aug. 20, 1982; 47 FR 46072, Oct. 15, 1982, as amended at 48 FR 21530, May 13, 1983; 50 FR 8580, Mar. 4, 1985; 50 FR 26975, July 1, 1985; 53 FR 52591, Dec. 28, 1988; 63 FR 9729, Feb. 26, 1998; 64 FR 72260, Dec. 27, 1999; 67 FR 43490, June 27, 2002; 69 FR 53544, Sept. 1, 2004; 71 FR 5, Jan. 3, 2006; 72 FR 41608, July 31, 2007; 76 FR 34571, June 13, 2011]

§ 226.17 Child care center provisions.

(a) Child care centers may participate in the Program either as independent centers or under the auspices of a sponsoring organization; provided, however, that public and private non-profit centers shall not be eligible to participate in the Program under the

Food and Nutrition Service, USDA

§ 226.17

auspices of a for-profit sponsoring organization. Child care centers participating as independent centers shall comply with the provisions of § 226.15.

(b) All child care centers, independent or sponsored, shall meet the following requirements

(1) Child care centers must have Federal, State, or local licensing or approval to provide day care services to children. Child care centers, which are complying with applicable procedures to renew licensing or approval, may participate in the Program during the renewal process, unless the State agency has information that indicates that renewal will be denied. If licensing or approval is not available, a child care center may participate if it demonstrates compliance with the CACFP child care standards or any applicable State or local child care standards to the State agency.

(2) Except for for-profit centers, child care centers shall be public, or have tax exempt status under the Internal Revenue Code of 1986.

(3) Each child care center participating in the Program must serve one or more of the following meal types—breakfast; lunch; supper; and snack. Reimbursement must not be claimed for more than two meals and one snack or one meal and two snacks provided daily to each child.

(4) Each child care center participating in the Program shall claim only the meal types specified in its approved application in accordance with the meal pattern requirements specified in § 226.20. For-profit child care centers may not claim reimbursement for meals served to children in any month in which less than 25 percent of the children in care (enrolled or licensed capacity, whichever is less) were eligible for free or reduced price meals or were title XX beneficiaries. However, children who only receive at-risk after-school snacks and/or at-risk after-school meals must not be included in this percentage.. Menus and any other nutritional records required by the State agency shall be maintained to document compliance with such requirements.

(5) A child care center with preschool children may also be approved to serve a breakfast, snack, and supper to

school-age children participating in an outside-school-hours care program meeting the criteria of § 226.19(b) that is distinct from its day care program for preschool-age children. The State agency may authorize the service of lunch to such participating children who attend a school that does not offer a lunch program, provided that the limit of two meals and one snack, or one meal and two snacks, per child per day is not exceeded.

(6) A child care center with preschool children may also be approved to serve a snack to school age children participating in an afterschool care program meeting the requirements of § 226.17a that is distinct from its day care program for preschool children, provided that the limit of two meals, and one snack, or one meal and two snacks, per child per day is not exceeded.

(7) A child care center may utilize existing school food service facilities or obtain meals from a school food service facility, and the pertinent requirements of this part shall be embodied in a written agreement between the child care center and school. The center shall maintain responsibility for all Program requirements set forth in this part.

(8) Child care centers shall collect and maintain documentation of the enrollment of each child, including information used to determine eligibility for free and reduced price meals in accordance with § 226.23(e)(1). In addition, Head Start participants need only have a Head Start statement of income eligibility, or a statement of Head Start enrollment from an authorized Head Start representative, to be eligible for free meal benefits under the CACFP. Such documentation of enrollment must be updated annually, signed by a parent or legal guardian, and include information on each child's normal days and hours of care and the meals normally received while in care.

(9) Each child care center must maintain daily records of time of service meal counts by type (breakfast, lunch, supper, and snacks) served to enrolled children, and to adults performing labor necessary to the food service.

(10) Each child care center must require key staff, as defined by the State agency, to attend Program training

§ 226.17a

7 CFR Ch. II (1–13 Edition)

prior to the center's participation in the Program, and at least annually thereafter, on content areas established by the State agency.

(c) Each child care center shall comply with the recordkeeping requirements established in § 226.10(d), in paragraph (b) of this section and, if applicable, in § 226.15(e). Failure to maintain such records shall be grounds for the denial of reimbursement.

(d) If so instructed by its sponsoring organization, a sponsored center must distribute to parents a copy of the sponsoring organization's notice to parents.

[47 FR 36527, Aug. 20, 1982, as amended at 52 FR 36907, Oct. 2, 1987; 53 FR 52591, Dec. 28, 1988; 54 FR 26724, June 26, 1989; Amdt. 22, 55 FR 1378, Jan. 14, 1990; 61 FR 25554, May 22, 1996; 62 FR 23619, May 1, 1997; 63 FR 9729, Feb. 26, 1998; 64 FR 72261, Dec. 27, 1999; 67 FR 43493, June 27, 2002; 69 FR 53546, Sept. 1, 2004; 70 FR 43262, July 27, 2005; 72 FR 41608, July 31, 2007; 75 FR 16328, Apr. 1, 2010]

§ 226.17a At-risk afterschool care center provisions.

(a) *Organizations eligible to receive reimbursement for at-risk afterschool snacks and at-risk afterschool meals*—(1) *Eligible organizations.* To receive reimbursement for at-risk afterschool snacks, organizations must meet the criteria in paragraphs (a)(1)(i) through (a)(1)(iv) of this section. To receive reimbursement for at-risk afterschool meals, organizations must meet the criteria in paragraphs (a)(1)(i) through (a)(1)(v) of this section.

(i) Organizations must meet the definition of an *At-risk afterschool care center* in § 226.2. An organization may participate in the Program either as an independent center or as a child care facility under the auspices of a sponsoring organization. Public and private nonprofit centers may not participate under the auspices of a for-profit sponsoring organization.

(ii) Organizations must operate an eligible afterschool care program, as described in paragraph (b) of this section.

(iii) Organizations must meet the licensing/approval requirements in § 226.6(d)(1).

(iv) Except for for-profit centers, at-risk afterschool care centers must be public, or have tax-exempt status under the Internal Revenue Code of

1986 or be currently participating in another Federal program requiring nonprofit status.

(v) Organizations eligible to be reimbursed for at-risk afterschool meals must be located in one of the eligible States designated by law or selected by the Secretary as directed by law.

(2) *Limitations.* (i) To be reimbursed for at-risk afterschool snacks and/or at-risk afterschool meals, all organizations must:

(A) Serve the at-risk afterschool snacks and/or at-risk afterschool meals to children who are participating in an approved afterschool care program; and

(B) Not exceed the authorized capacity of the at-risk afterschool care center.

(ii) In any calendar month, a for-profit center must be eligible to participate in the Program as described in the definition of For-profit center in § 226.2. However, children who only receive at-risk afterschool snacks and/or at-risk afterschool meals must not be considered in determining this eligibility.

(b) *Eligible at-risk afterschool care programs*—(1) *Eligible programs.* To be eligible for reimbursement, an afterschool care program must:

(i) Be organized primarily to provide care for children after school or on weekends, holidays, or school vacations during the regular school year (an at-risk afterschool care center may not claim snacks during summer vacation, unless it is located in the attendance area of a school operating on a year-round calendar);

(ii) Have organized, regularly scheduled activities (i.e., in a structured and supervised environment);

(iii) Include education or enrichment activities; and

(iv) Except for *Emergency shelters* as defined in § 226.2, be located in an eligible area, as described in paragraph (i) of this section.

(2) *Eligibility limitation.* Organized athletic programs engaged in interscholastic or community level competitive sports are not eligible afterschool care programs.

(c) *Eligibility requirements for children.* At-risk afterschool snacks and/or at-risk afterschool meals are reimbursable only if served to children who are